No. 80-543

IN THE

# Supreme Court of the United States

October Term, 1980

STATE OF NEW YORK,

*Petitioner,*

*v.*

ARCHIE WILLIAM HOWARD,

*Respondent.*

## PETITIONER'S REPLY MEMORANDUM


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Contrary to respondent's assertion, there is nothing in the New York Court of Appeals' decision which even suggests that it is adopting stricter constitutional standards for New York than those contained in the United States Constitution. The majority opinion emphasized that the Federal and State constitutional provisions involved contain "identical language" and placed great reliance upon this Court's decisions in *Brown* v. *Texas,* 443 U.S. 47, *Davis* v. *Mississippi,* 394 U.S. 721, and *Terry* v. *Ohio,* 392 U.S. 1. Indeed, this case is remarkably similar in its procedural posture to another Fourth Amendment case recently decided by this Court:

> This is one of those cases where 'at the very least, the (state) court felt compelled by what it understood to

> be federal constitutional considerations to construe . . . its own law in the manner it did.' *Zacchini* v. *Scripps-Howard Broadcasting Co.*, 433 U.S. 562, 568, 97 S.Ct. 2849, 2853, 53 L.Ed.2d 965 (1977). Had state law not been mentioned at all, there would be no question about our jurisdiction, even though the state constitution might have provided an independent and adequate state ground. *Ibid.* The same result should follow here where the state constitutional holding depended upon the state court's view of the reach of the Fourth and Fourteenth Amendments. If the state court misapprehended federal law, 'it should be freed to decide . . . these according to its own local law.' *Southern R. Co.* these suits according to its own local law.' *Southern R. Co.* v. *Mayfield*, 340 U.S. 1, 5, 71 S.Ct. 1, 3, 95 L.Ed.3 (1950).

*Delaware* v. *Prouse*, 440 U.S. 648, ——, 99 S.Ct. 1391, 1356-6.

Respondent is similarly wrong in contending that the New York Court of Appeals "also grounded its decision on the state's 'stop and frisk' statute, New York Criminal Procedure Law § 140.50 . . . which does not implicate the United States Constitution in any respect in the context of this case." Brief for Respondent in Opposition, p. 4. This statutory section, *inter alia*, permits a police officer to stop a person in a public place upon a reasonable suspicion that the person has committed or is about to commit a crime and permits the officer to frisk the suspect if the officer reasonably suspects he is in danger of physical injury. Since the Court of Appeals specifically concluded that "[t]he officers had no information that a crime had occurred or was about to take place . . ." (Petitioner's Appendix, 7a), the instant case was not decided under this statute. In any event, moreover, it should be evident that this statute is a codification of this Court's Fourth Amendment ruling in *Terry* v. *Ohio, supra, Sibron* v. *New York* and *Peters* v. *New*

*York,* 392 U.S. 40. See Practice and Supplemental Practice Commentaries, McKinney's Consolidated Laws of New York, Criminal Procedure Law § 140.50.

Finally, this Court should be aware of the decision of the California Court of Appeals for the Fifth District in *People* v. *Allen,* 28 CrL 2037, decided August 29, 1980, in which the court ruled that a defendant's flight from a lawful investigatory stop by the police constituted an obstruction of justice. Thus, in California, people who flee from lawful investigative stops by the police are prosecuted for criminal conduct, whereas, in New York, police who chase after persons fleeing from lawful investigative stops are condemned for illegal activity. This egregious conflict in authority serves only to highlight the magnitude of the federal question presented.

Respectfully submitted,

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